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**THE HELMS-BURTON ACT: A STRATEGIC CRITIQUE**

BY

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USAWC STRATEGY RESEARCH PROJECT

**The Helms-Burton Act: A Strategic Critique**

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## **ABSTRACT**

AUTHOR: LtCol J. R. Scharfen, USMC  
TITLE: The Helms-Burton Act: A Strategic Critique  
FORMAT: Strategy Research Project  
DATE: 31 March 1998 PAGES: 41 CLASSIFICATION: Unclassified

The 1996 Helms-Burton Act (the Act) codifies and expands U.S. economic sanctions, including a comprehensive embargo, against Cuba. The primary strategic objective behind the Act is the overthrow of Fidel Castro and the establishment of a democratic transition government in Cuba.

In spite of U.S. sanctions, recent events confirm the commonly held belief that Castro's government will not fall in the near- or mid-term. Consequently, the Act is fatally flawed because its primary strategic objective is unrealistic.

The United States should replace the Helms-Burton Act with a diplomatic strategy managed by the Executive Branch in consultation with Congress. This diplomatic strategy should focus on developing economic and domestic conditions within Cuba favorable for a post-Castro transition to democracy rather than on the immediate, and highly unlikely, downfall of Castro.



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The 1996 Helms-Burton Act<sup>1</sup> (the Act) codifies and expands long-standing U.S. economic sanctions against Cuba. The sanctions, which include a comprehensive and unilateral embargo, were first imposed almost four decades ago during the Cold War. The strategic environment has changed significantly since the end of the Cold War but U.S. strategy for Cuba has failed to evolve and reflect these changes.

The primary strategic objective behind the Act is the overthrow of Fidel Castro and the establishment of a democratic transition government in Cuba. The commonly held doubt that Castro's government will fall calls into question the Act's underlying strategy. U.S. security interests in the post-Cold War world would be better served by recognizing the limitations of our coercive strategy and replacing the Helms-Burton Act with a new strategy focused on achievable objectives.

Procedurally, the United States should replace Helms-Burton with a diplomatic strategy that is managed by the Executive Branch rather than a strategy driven by legislation. This diplomatic strategy should focus on developing domestic conditions favorable for a post-Castro transition to democracy rather than on the immediate, and highly unlikely, downfall of Castro.

## **CUBAN EMBARGO: A MIXED LEGACY**

An analysis of the effectiveness of the U.S. embargo demonstrates the strategic objective of the Helms-Burton Act is unrealistic. The embargo can be divided into three periods: (i) prior to and (ii) after the end of Soviet subsidies caused by the collapse of the Soviet Union, and (iii) after the passage of the Helms-Burton Act.

The United States has maintained a comprehensive trade embargo of Cuba for almost four decades. The embargo was originally based on presidential executive orders, and could be modified at a president's discretion as relations warranted.<sup>2</sup>

The U.S. embargo of Cuba during the Cold War had four goals: Check Soviet expansion; deter Cuban support (military and otherwise) of communist revolutions abroad; foster economic, social and political liberalization (requiring the overthrow of Castro); and establish property rights within Cuba. These goals made strategic sense within the geopolitical context of the Cold War<sup>3</sup> and enjoyed bipartisan political support.

During the Cold War, our economic embargo at most may have helped to limit Soviet expansion in Latin America. The embargo, however, failed to deter earlier Cuban military support of communist revolutions abroad, foster economic, social, or political reforms, overthrow Castro, or establish property rights within Cuba.

As President Clinton remarked to the Canadian Ambassador when comparing the two countries' sharply differing Cuba policies: "Since there hasn't been appreciable change in the Cuban regime, neither of our policies can claim success."<sup>4</sup>

With the collapse of the Soviet Union in 1991 there came an abrupt halt to billions of dollars of Soviet annual subsidies to Cuba.<sup>5</sup> According to various estimates, the end of subsidies caused the Cuban economy to contract from one third to one half of its 1989 levels.<sup>6</sup> During the worst years of this economic crisis, Cuba had "almost no petroleum, electricity, food, transport or production".<sup>7</sup>

On August 5, 1994, the gravity of the economic crisis became evident. Cuba's security organs quashed riots on the Havana waterfront. Soon after 30,000 Cubans fled the island with the government's acquiescence. Short term, Castro managed social unrest through his repressive internal security forces, and in part the migration.<sup>8</sup>

Long term, Castro managed the economic crisis and social unrest by reluctantly initiating modest economic reforms. As a result of these reforms, Cubans may now posses U.S. dollars while the government actively seeks foreign investment to fill the void left by past Soviet subsidies. Recently, the Cuban government permits self-employment by some Cubans, private farmer markets, and family enterprises.<sup>9</sup>

Individuals with self-employment licenses now may engage in over 140 specified trades, crafts, and services for private gain. Examples of permitted private employment range from taxi drivers and mechanics to cooks and hairdressers. But self-employment is closely regulated by the Communist Party and limited to only certain people, such as laid-off workers, housewives and retirees.<sup>10</sup>

The decision to reopen the farmer's markets (closed since 1986) was reportedly key to easing Cuba's food crisis.<sup>11</sup> Some observers contend that Cuba's new farmers markets and mom-and-pop businesses have created a "production boom of sorts".<sup>12</sup>

These economic reforms helped deter further social unrest and stabilized the economy. The reforms, however, fall short of committing to a transition to a market economy. For example, Cuban law prohibits Cubans from hiring Cubans other than family members.<sup>13</sup> (Cuban law permits foreign firms to hire Cubans through the state.) Cuba remains a state-controlled economy<sup>14</sup> where central planning and government price-setting are still the norm.

Castro, ever the Marxist, continues to prohibit a market economy for both political and ideological reasons. Castro blames capitalism for causing the collapse of the Soviet Union<sup>15</sup> and is determined not to repeat the mistakes of his former patron. Cuba, Castro lectures, will not experiment with a "...

return to capitalism, or much worse, an insane and hysterical race in that direction."<sup>16</sup> Castro understands well that unchecked free market reforms, with a potentially influential commercial or nascent middle class, are a threat to his one-party rule.<sup>17</sup>

Castro's political concerns led him to reject economic proposals to replace state enterprises with small and medium sized businesses. Castro called such ideas "a cancer devouring the revolutionary spirit."<sup>18</sup> Instead of permitting a Cuban market economy to develop, Castro seeks to cure his economic problems by building an "enclave foreign investment sector and a tourism industry based on preferential treatment of foreigners."<sup>19</sup>

Castro initiated economic reforms out of necessity, not conviction, and it is unclear whether these changes are permanent. For instance, the president of the Cuban National Assembly casts substantial doubt regarding the longevity of these reforms: "While it is true that we have some things in our reality that are not to our liking - the dual economy, the circulation of dollars - that was done out of necessity. But it is something that we should try to eliminate, the sooner the better."<sup>20</sup>

Though Castro made economic reforms reluctantly, it appears these measures were sufficient to allow the Cuban economy to

bottom out. In fact, Cuba's economy experienced modest growth between 1992-1995, with a 2 percent growth rate reported for 1997.

Such improvements, however, must be kept in perspective: Economic conditions within Cuba remain dire.<sup>21</sup> The Economist reports Cuba "is now a country of ruins" where Cubans, "for the most part, must still live from hand to mouth."<sup>22</sup> Rationed goods are scarce and an informal or underground economy with widespread corruption operates in place of the official economy.<sup>23</sup> News reports indicate poverty, hunger, unemployment, and prostitution are now commonplace.<sup>24</sup>

Castro's economic reforms, however limited, have not been accompanied by commensurate political reforms. Politically, Castro's regime remains repressive and the Communist Party as dominant as ever.

At the grass roots level, the communist regime continues to beat and jail dissidents while relying on such Marxist staples as its repressive neighborhood watch system.<sup>25</sup> Every neighborhood block still has an office for the Committee for the Defense of the Revolution, and communist fliers encourage neighbors to report counter-revolutionary acts.<sup>26</sup> Purges, show trials, constitutional provisions allowing political repression, suppression by mobs of labor and political opposition groups, and

the beating and jailing of dissidents are recent occurrences in Castro's Cuba.<sup>27</sup>

For Castro, his Marxism justifies such repression. As recently as October 1997, he delivered a vintage eight-hour opening speech for the Fifth Communist Party Congress. In it, Castro extolled the virtues of the revolution and socialism while "reaffirming his role as 'maximum leader'".<sup>28</sup>

Regarding Cuba's recent economic reforms, Castro holds up communist China and Vietnam as models for implementing economic reforms without political liberalization.<sup>29</sup> With the lessons of Eastern Europe fresh in his mind, Castro seems to appreciate the durability of a total dictatorship and the vulnerability of a dictatorship that equivocates its tyranny.

Above all, Castro identifies himself with the revolution and has shown no signs of relinquishing power. News reports indicate that Castro is "obsessed" with preserving the revolution and is "intensely proud that he has again defied world predictions of his imminent demise."<sup>30</sup>

In conversations, Castro returns frequently to the preservation of the revolution. He argues that "Revolutionaries never retire."<sup>31</sup> More ominously, reports indicate Castro is willing to "unleash 'revolutionary terror' in the streets" to suppress any dissent.<sup>32</sup>

It is within this context that Helms-Burton became law.

## **HELMS-BURTON: THE REJECTION OF CLINTON'S CALIBRATED POLICY**

President Clinton initially chose a policy of "calibrated response"<sup>33</sup> in dealing with Cuba. Without entering public negotiations that would be politically controversial, President Clinton's administration announced that reforms in Cuba would be met with proportional changes in U.S. policy. This flexible policy "held out the carrot of improved relations" in hopes of bolstering advocates of reform within Cuba.<sup>34</sup>

President Clinton's policy was destined to change when, on February 24, 1996, Castro himself reportedly approved<sup>35</sup> the action that sent Cuban MiGs to down two civilian planes flown by American citizens. The downing of the U.S. civilian aircraft occurred during the politically charged period of presidential primaries providing a fertile field for retribution.

The Helms-Burton Act, previously thwarted by threats of presidential veto on grounds that it was unwise policy<sup>36</sup>, quickly passed and became law. Opponents of the Act comment bitterly that the Act grew largely out of domestic presidential politics, not national security.<sup>37</sup>

Whatever the genesis of the Act, it replaced the existing embargo that was implemented pursuant to presidential discretion.

The Act imposes an inflexible embargo imposed in detail by law.

In summary, the Act<sup>38</sup>:

- Expands the U.S. government's ability to impose civil penalties against U.S. citizens who violate U.S. embargo regulations;
- Bars U.S. private investment in Cuba's domestic telephone infrastructure;
- Codifies all current embargo restrictions in effect on March 1, 1996, removing the president's previous authority to modify sanctions against Cuba without Congressional action;
- Bars U.S. support for Cuban membership in international financial institutions;
- Mandates the preparation by the President of a plan for providing assistance to future transition and democratic Cuban governments;
- Establishes requirements and factors for determining when a transition government is in power in Cuba;
- Creates a right of action that will allow U.S. persons whose property was confiscated by the Cuban government who are now U.S. citizens to sue in U.S. courts either Cuban governmental entities or foreign investors who engage in transactions involving, or who use or profit in any way from, those properties;<sup>39</sup> and,

- Requires that the State Department deny visas to individuals and their spouses and children, or corporate officers and controlling shareholders of companies and their spouses and children, which traffic<sup>40</sup> in U.S.-claimed properties in Cuba after the bill becomes law.<sup>41</sup>

### **OBJECTIVES OF HELMS-BURTON**

The objectives of Helms-Burton are explicit and detailed. These include: deter foreign corporations from investing in Cuba; protect American property interests; and, of primary importance to the sponsors of the Act, establish, through economic sanctions, a democratic transition government by first removing Castro and his brother Raul from power.

The sponsors of the Act, Congressman Dan Burton and Senator Jesse Helms, expressed their strategic objectives in highly personal, anti-Castro, terms. Congressman Burton declared the Act will be "the last nail in Fidel Castro's coffin". Senator Helms cracked, "Adios, Fidel".<sup>42</sup>

This personal animus is expressed in the Act as it targets Castro and his brother by name. Under the Act, the president no longer can lift or amend the embargo against Cuba until Castro and his existing government are replaced by a democratic government. Only in the event a transition government without a

Castro presence comes to power in Cuba, may the president suspend portions of the embargo.<sup>43</sup>

### **HELMS-BURTON: AN INEFFECTIVE UNILATERAL EMBARGO**

Cuba readily admits that Helms-Burton has a substantial and adverse impact upon Cuba. With increased uncertainty among investor countries, foreign investments in Cuba have diminished and the cost of external financing has increased<sup>44</sup>.

For example, party leaders report that investment in this year's sugar harvest fell short by 65% (\$200 million) of the investment that was needed for an effective harvest. The Communist Party newspaper reports that the Act is adversely affecting foreign investment in fuel and food import sectors.<sup>45</sup>

Not surprisingly, as demonstrated during the recent visit by Pope John Paul II to Cuba, the lifting of the embargo remains Castro's top foreign policy priority.<sup>46</sup>

While inflicting economic and social harm on Cuba, the embargo has not deterred all foreign investment. Indeed, the United States stands almost alone in its embargo against Cuba. Foreign investors have signed twenty-five new joint ventures within Cuba since the signing of the Act, including a \$400 million deal involving eleven resort hotels. Total foreign investment is currently estimated to be \$2.1 billion.<sup>47</sup>

Politically, the domestic impact of Helms-Burton within Cuba is more ambiguous and subject to conflicting interpretations.

However, the Act may help as much as it harms Castro politically.

Using nationalistic rhetoric in referring to the Act, Castro has cracked down on opposition journalists and dissidents. At the same time he has rallied support within the communist party and public at large for his regime. Opponents of the Act argue that Castro uses the Act as a scapegoat to explain and divert attention from dismal economic conditions.<sup>48</sup>

Examples of such diversionary political tactics are easy to find in Cuba. For instance, murals on Havana walls depict Hitler shouting "Heil Helms". In another, Uncle Sam is shown strangling Cuba saying, "you'll just have to put up with it. Then I'll bring humanitarian aid."<sup>49</sup>

Some Cuban dissidents, noting the unintended political effects of the Act, reportedly refer to the Act derisively as the "Helms-Burton-Castro Act".<sup>50</sup> The Communist Party gave the Act prominent coverage in the Cuban press and staged public rallies to denounce it and whip up anti-Yankee nationalism.<sup>51</sup>

For its part, the party has responded to the perceived political threats arising from the economic dislocations by reducing the Central Committee membership. The party aimed to make the Committee resistant to recent "ideological viruses".<sup>52</sup> Raul Castro, in keeping with the defiant mood, asserted on state

television that: "What happened to the socialist countries of Eastern Europe and the Soviet Union is not going to happen here."<sup>53</sup>

Diplomatically, Helms-Burton creates persistent, public, and bitter opposition among U.S. allies. The nearly unanimous international opposition to the Act has not diminished, despite President Clinton's suspending<sup>54</sup> Title III and its lawsuit provisions.

The European Union (EU), Canada, Mexico and the Organization of American States claim that Helms-Burton violates international law.<sup>55</sup> Resentment among these allies runs high as they see the Act as an attempt to bludgeon them into supporting an unpopular U.S. foreign policy.

Canada and Mexico are threatening to challenge the Act under the North American Free Trade Agreement. Canada passed "clawback" laws allowing reciprocal seizures if Helms-Burton is enforced.<sup>56</sup>

For its part, the EU agreed to temporarily suspend its case against the U.S. before the World Trade Organization only after a provisional agreement to pursue negotiations was reached with Washington. Under the understanding, the administration will lobby Congress to soften Helms-Burton's property provisions. The Europeans in turn will consider unspecified actions against transactions involving expropriated Cuban property.

On the other hand, some argue that Castro would never have invited the Pope to visit, and made the recent religious reforms within Cuba, were it not for the embargo. Even this argument, however, begs the question whether the primary objective of the embargo is achievable.

The primary objective of the Helms-Burton Act is to drive the Castro brothers from power. Like the embargo of the preceding 36 years, the Act is highly unlikely to cause Castro's political demise for a number of reasons.

The most important reason may be the limited utility of economic sanctions in general in achieving such an ambitious objective. As a rule, the history of economic sanctions reveals embargoes to be largely ineffective in forcing either major policy changes or the removal of foreign governments.<sup>57</sup>

South Africa, where economic sanctions played a key role in forcing universal elections, is the sole exception to this rule. It must be noted, that the ambitious objective of the South African embargo enjoyed an unprecedented international consensus.

In contrast, international consensus is lacking entirely with the Cuban embargo. It is essentially a unilateral embargo.

Far from enjoying any type of international consensus, the U.S. pays a significant diplomatic price for its embargo. The U.S. faces almost universal condemnation and active, bitter opposition to the Act from its most important trading partners and allies. Some congressional proponents of the embargo, vainly

seeking allied support, admit that "[n]o unilateral embargo can by itself overthrow a government ...".<sup>58</sup>

In Cuba's case, international opposition to Helms-Burton and the general ineffectiveness of embargoes as tools for overthrowing governments is compounded by the nature of Castro and his regime. Castro's political skills, party apparatus, undiminished will to survive as a dictator, and status as a revolutionary icon make his overthrow (or a succession other than the one planned for his brother<sup>59</sup>) extremely unlikely. These political realities throw into question the strategic objectives of Helms-Burton.

Castro's masterful management of Pope John Paul II's recent visit illustrates Castro's undiminished political security.<sup>60</sup>

The former head of the U.S. Interests Section in Havana observed that the Papal visit "...strengthens the conviction that Castro is not going anywhere..." and that "[t]his is not a revolution on the verge of collapse. This is not a guy on the verge of collapse."<sup>61</sup>

The Papal visit has already benefited Castro. In the aftermath of the staunchly anti-Communist Pope's criticism of the U.S. embargo, Senator Helms endorsed an anti-Castro Cuban exile group's (Cuban American National Foundation) legislative proposal to amend the embargo. The proposal would permit the Cuban-American community, and possibly the U.S. government, to provide

donated medicine and food to Cubans.<sup>62</sup> Ninety U.S. Congressmen are sponsoring the bill and 140 religious and business groups endorse the proposal.<sup>63</sup>

Convincing moral, diplomatic, and strategic arguments can be made against the embargo, especially its prohibitions barring food and medicine<sup>64</sup>. Nonetheless, modifying the embargo through legislation in this manner is not in the United State's strategic interest.

To precipitously and unilaterally abandon through legislation any aspect of the embargo, even those provisions that may be morally ambiguous, ineffective, or mismatched with their objectives, would be a mistake. Nothing should be conceded to Castro without first attempting to negotiate a quid pro quo of some sort, whether it be the release of political prisoners or meaningful concessions to democratic systems.

The Pope's visit illustrates the advantages of pursuing a policy of engagement and negotiations with Cuba. The papal visit involved years of tough negotiations between the Vatican and Castro.<sup>65</sup> The Pope, a hero of the Cold War, won well publicized concessions from Castro granting the Catholic Church greater "space" in Cuban society, such as increased entry visas for foreign priests and nuns, the celebration of outdoor masses,<sup>66</sup> and the recently announced planned release of 100 political

prisoners. (Only time will tell whether these concessions will be institutionalized or lasting.<sup>67</sup>)

## RECOMMENDATIONS

Congress should replace the Helms Burton Act in favor of a Vatican-like strategy of negotiated engagement with Cuba. In the short term, this will require abandoning the unrealistic Helms-Burton goal of overthrowing Castro and his designated successor, Raul<sup>68</sup>.

Longer term, the Executive Branch should develop a two-part strategy for (i) negotiating the deliberate, carefully managed, and phased end of the embargo and (ii) engaging with Cuba. The Executive Branch should develop the strategy in close and continuing consultation with Congress. The strategy for negotiations and engagement should not, however, be legislated by Congress as currently done under Helms-Burton. Helms-Burton's legislative approach to strategy is unwise because it "freeze[s] the details" of foreign policy and "impairs the ability of the president to conduct foreign relations".<sup>69</sup>

Repealing Helms-Burton would allow the president, in consultation with Congress, to fashion a flexible, calibrated economic, political, military, and diplomatic strategy for Cuba. Before such a comprehensive strategy can be fashioned, however, the Executive Branch must first establish a more disciplined and

deliberative process for evaluating U.S. economic and diplomatic options for Cuba.

A growing consensus exists that the U.S. is poorly organized to make or implement national security policy for sanctions or economic conflict in general.<sup>70</sup> For instance, the Hamilton-Crane-Lugar Sanctions Reform Bill (the Reform Bill) seeks to establish a more deliberative and informed procedural framework for considering future sanctions.

The Reform Bill would require the Executive Branch and Congress to request information about, and report on, whether sanctions are likely to be effective in achieving a U.S. objective, what the economic and diplomatic costs will be for the United States, whether the sanctions will harm other U.S. interests or objectives, and whether alternative strategies have been tried and failed.<sup>71</sup> The U.S. embargo and Cuba policy requires a similar, rigorous, dispassionate, and institutional analysis.

As recommended in a recent report to the State Department<sup>72</sup>, the National Security Council (NSC) and the National Economic Council are best situated to analyze sanctions for national security matters. An interagency "Sanctions Review Committee", chaired by the NSC, would be best qualified to provide an informed strategic review of U.S. policy for Cuba.

The Sanctions Review Committee should craft a strategy for entering negotiations regarding the incremental or calibrated

lifting of sanctions in exchange for free market reforms and human rights improvements in Cuba. The lifting of existing economic sanctions should be placed within a larger strategic framework of measures to leverage change in Cuba.<sup>73</sup>

A strategy of engagement involving political, military, economic, media, and private interests is also best developed through such a committee. The Report of the Advisory Committee on International Economic Policy provides an illustrative matrix of some 84 U.S. foreign policy measures that should be harnessed to pull our strategy.<sup>74</sup> These include both friendly and hostile measures and are divided into diplomatic, political, cultural, economic, and military tools. The committee should develop alternate strategies in consultation with Congress and private groups for satisfying Cuban American claims for expropriated property.<sup>75</sup>

A policy of engagement is a better match with the 1997 National Security Strategy (NSS) than the existing policy of isolation and unilateral embargo. The NSS describes U.S. goals in Cuba as promoting a peaceful transition to democracy, encouraging free market economic reforms, and forestalling a mass migration exodus.<sup>76</sup>

In pursuit of these goals, the NSS seeks to do more than pressure Cuba. The NSS seeks to "encourage the emergence of a civil society to assist transition to democracy" in Cuba<sup>77</sup>. A

strategy of engagement is better suited than a unilateral embargo or a strategy of isolation to develop civil society<sup>78</sup> within Cuba.

A more developed free-market economy (fueled by U.S. private investment) and a more developed civil society (encouraged through greater engagement with the United States) will generate internal pressures for political reforms within Cuba. As one experienced diplomat observed, capitalism and expanded contact with democracies can have fatally subversive impacts on communist dictatorships.<sup>79</sup>

The emergence of a civil society in Cuba is also in the best strategic interest of the United States as it will increase the chances of a "softer landing" in any post-Castro Cuba<sup>80</sup>, whenever that may occur. Improving economic conditions within Cuba by negotiating an end to the embargo will reduce the threat of mass immigrations, which the NSS identifies as a threat to our national safety.<sup>81</sup>

Finally, adopting this strategic change can be accomplished in the post-Cold War environment with little to no threat to U.S. national security. Today, communist Cuba poses no serious geopolitical or military threat to its neighbors.<sup>82</sup> Our Cuba strategy has failed to reflect these changes and evolve with a changing strategic environment. Our strategy, in short, is a Cold War relic.

## **CONCLUSION**

Revoking Helms-Burton in favor of a strategy of negotiations and engagement would bring our strategy in line with U.S. post-Cold War strategic interests. This change in strategy would de-personalize our policy, make it consistent with our strategy for other communist states, avoid a trade war with our allies, avoid undermining the World Trade Organization and North American Free Trade Agreement, and with them, our larger free market interests, deny Castro a rallying point for political purposes, lessen the risk of future mass migrations, end unjustified economic deprivations within Cuba, and build more effective economic and social conditions for Cuban political reform. (5,228)



## ENDNOTES

<sup>1</sup> Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, Pub. L. No. 104-114 (the Helms-Burton Act), March 12, 1996.

<sup>2</sup> William M. LeoGrande, "Enemies evermore: US policy towards Cuba after Helms-Burton", Journal of Latin American Studies 29 (February 1997): 211.

The Embargo on All Trade With Cuba was first imposed by President Kennedy in 1962. President Kennedy enacted the embargo under authority of section 620(a) of the Foreign Assistance Act of 1961. The Act provided that "the President is authorized to establish and maintain a total embargo on all trade between the United States and Cuba." Brice M. Clagett, "Agora: The Cuban Liberty and Democratic Solidarity (Libertad) Act", American Journal of International Law 90 (October 1996) 4: 420.

<sup>3</sup> The ideas in this paragraph are based on remarks made by a speaker participating in the Commandant's Lecture series.

<sup>4</sup> Daniela Deane, "Clinton, Chretien agree to disagree on Cuba", USA Today, 9 April 1997, Sec. A, p.8.

<sup>5</sup> Edward Gonzalez and David Ronfeldt, Storm Warnings for Cuba (RAND National Defense Research Institute, 1994), 2-6.

<sup>6</sup> U.S. Agency for International Development, Support For Democratic Transition in Cuba (Washington, D.C.: U.S. State Department, January 28, 1997), 3.

<sup>7</sup> Johana McGeary, "Clash of Faiths," Time, 26 January 1998, 29.

<sup>8</sup> Edward Gonzalez, CUBA Clearing Perilous Waters? (Santa Monica, CA: RAND National Defense Research Institute, 1996), 10.

<sup>9</sup> Ibid.

<sup>10</sup> Edward Gonzalez and David Ronfeldt, Storm Warnings for Cuba (RAND National Defense Research Institute, 1994), 44-45.

<sup>11</sup> McGeary, "Clash of Faiths," 6.

<sup>12</sup> Ibid. at 29.

<sup>13</sup> U.S. Agency for International Development, Support For Democratic Transition in Cuba. Washington, D.C.: U.S. State Department, January 28, 1997, 11.

<sup>14</sup> Gonzalez, CUBA Clearing Perilous Waters?, 9.

<sup>15</sup> Ibid. at 37.

<sup>16</sup> Ibid.

<sup>17</sup> Gonzalez and Ronfeldt, Storm Warnings for Cuba, 46-47.

<sup>18</sup> "Heroic Illusions - A Survey of Cuba", The Economist, 6 April 1996, 6.

<sup>19</sup> Ibid. at 3.

<sup>20</sup> McGeary, "Clash of Faiths," 34.

<sup>21</sup> Michael E. Ranneberger, "U.S. Policy Towards Cuba", lecture, Hayek Lecture Series, Coral Gables, Florida, 17 November, 1997.

<sup>22</sup> "Heroic Illusions - A Survey of Cuba", 6-7.

<sup>23</sup> Ibid. at 8.

<sup>24</sup> McGeary, "Clash of Faiths," 29.

<sup>25</sup> Four leading dissidents were recently jailed for merely critiquing a Communist party document and by all accounts the Marxist political apparatus remains unchanged and repressive. Kenneth L. Woodward, "God's Man in Havana," Newsweek, 19 January 1998.

The Economist reports the party remains oppressively pervasive in the everyday lives of Cubans:

Almost every Cuban belongs to an organization controlled by the Communist party: the party itself, a workers' union, the Cuban Federation of Women, a local cadre. Like Fidel, the party is all-pervasive. Ordinary jobs depend on ideological devotion. Report cards measure a student's political enthusiasm. Diligent schoolchildren receive the red or blue scarves of the Young Pioneers. Doubters about the revolution are *gusanos*, or worms. The three newspapers (different titles, one voice) retail the jargon of quotas, plans and exhortations.

"Heroic Illusions - A Survey of Cuba", 4.

Reports generally put the number of political prisoners at 500. Castro "continues to quash any organized opposition, harassing, imprisoning and driving into exile dissident leaders." Serge F. Kovaleski, "Castro, Ever the Politician, Consolidates His Grip on Power", The Washington Post, 4 February, 1998, sec, A, p. A21.

<sup>26</sup> "Heroic Illusions - A Survey of Cuba", 4.

<sup>27</sup> Gonzalez and Ronfeldt, Storm Warnings for Cuba, 13-14 and 31-32.

<sup>28</sup> Kovaleski, "Castro, Ever the Politician, Consolidates His Grip on Power", p. A21.

<sup>29</sup> Gonzalez, CUBA Clearing Perilous Waters?, 9.

<sup>30</sup> McGeary, "Clash of Faiths," 30.

<sup>31</sup> Ibid.

<sup>32</sup> Gonzalez, CUBA Clearing Perilous Waters?, 37.

<sup>33</sup> Leogrande, "Enemies evermore: US policy towards Cuba after Helms-Burton," 211.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid. and Gonzalez, CUBA Clearing Perilous Waters?, 105-106.

<sup>36</sup> Secretary of State Warren Christopher wrote to Speaker Newt Gingrich that the draft bill "would actually damage prospects for a peaceful transition" government in Cuba and "jeopardize a number of key U.S. interests around the globe." Clagett, "Agora: The Cuban Liberty and Democratic Solidarity (Libertad) Act," 419.

<sup>37</sup> This sentence is based on remarks made by a speaker participating in the Commandant's Lecture series.

<sup>38</sup> Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, "Summary of Provisions", U.S. Department of State, undated.

A more complete version of the summary of the Act indicates that the Act:

- Expands the U.S. government's ability to impose civil penalties against U.S. citizens who violate U.S. embargo regulations;

- Bars U.S. private investment in Cuba's domestic telephone infrastructure;
- Codifies all current embargo restrictions in effect on March 1, 1996, removing the President's previous authority to modify sanctions against Cuba without Congressional action until a transition government is in power;
- Bars U.S. support for Cuban membership in international financial institutions until a democratic Cuban government is in power;
- Mandates the preparation by the President of a plan for providing assistance to future transition and democratic Cuban governments;
- Establishes requirements and factors for determining when a transition government is in power in Cuba, including a commitment to democratic elections, release of all political prisoners, and legalization of all political activity. Neither Fidel nor Raul Castro may be members of such a government;
- Establishes additional requirements for determining when a democratic government is in power, including progress toward an independent judiciary, economic reform, and the resolution of U.S. property claims;
- Creates a right of action that will allow U.S. persons whose property was confiscated by the Cuban government who are now U.S. citizens to sue in U.S. courts either Cuban governmental entities or foreign investors who engage in transactions involving, or who use or profit in any way from, those properties. This provision may be suspended by the President every six months if he certifies that it would be necessary to the national interest and will expedite a transition to democracy in Cuba. Even after the cause of action becomes effective, the President may suspend the filing of new suits if he makes such a certification; and,
- Requires that the State Department deny visas to individuals and their spouses and children, or corporate officers and controlling shareholders of companies and their spouses and children, which traffick in U.S.-claimed properties in Cuba after the bill becomes law. The Attorney General is also charged with excluding traffickers and their families at U.S. ports of entry.

<sup>39</sup> The potential scale of litigation under the Act in U.S. courts is large. "[M]ore than 6,000 claims for compensation are on file from American companies and citizens whose assets were seized after Castro took power in 1959." Anthony Wilson-Smith, "Clinton's Concession," Maclean's 109 (29 July 1996) 31: 14.

Estimates of the current value of these claims are as high

as \$6 billion. Also, Cuban-Americans have complained that the Castro regime sold confiscated properties after the collapse of the Soviet Union. These sales were allegedly needed to meet Cuba's desperate cash needs in the aftermath of the cutoff of billions of dollars in Soviet annual subsidies. D'Arcy Jenish, "Canadians prepare to fight a U.S. ban on trade with Cuba," Maclean's, 109 (24 June 1996) 26: 30.

<sup>40</sup> Previously, the word "trafficking" was used "in legislation almost exclusively" dealing with narcotics. . Clagett, "Agora: The Cuban Liberty and Democratic Solidarity (Libertad) Act," 425.

<sup>41</sup> Business executives have been barred entry into the U.S. under Title IV. For example, eleven executives from the Canadian firm Sherritt International Corporation in 1996 from entering the U.S. because of their business with Cuba. Merrill Goozner, "U.S. Law Fails to Scare Canada Firms Out of Cuba," Chicago Tribune, 16 June 1997, Sec.1, p. 4.

<sup>42</sup> Congressman Dan Burton: The Act will be "the last nail in Fidel Castro's coffin". Senator Jesse Helms: "Adios, Fidel". Leogrande, "Enemies evermore: US policy towards Cuba after Helms-Burton," 214.

<sup>43</sup> The Act provides detailed definitions of both democratic and transition governments, both of which require Cuba to return expropriated property to U.S. citizens. With its detailed definitions and provisions, the Act has been criticized for "micromanaging" foreign relations.

<sup>44</sup> "Saying boo to Helms-Burton", The Economist, 341(22 October 1996) 7988: 49.

<sup>45</sup> Serge F. Kovaleski, "Castro Appears Strong, Cuban Economy Weak", The Washington Post, 11 October 1997, sec, A, p. A24.

<sup>46</sup> Gonzalez, Cuba Clearing Perilous Waters, 74 and 67.

<sup>47</sup> "Saying boo to Helms-Burton," 49.

<sup>48</sup> Congressman Lee H. Hamilton, "A new policy is needed, argues an Indiana representative" The Christian Science Monitor, 3 June 1997, p. 19.

<sup>49</sup> "Saying boo to Helms-Burton," 49.

<sup>50</sup> Hamilton, "A new policy is needed, argues an Indiana representative," p. 19.

<sup>51</sup> Leogrande, "Enemies evermore: US policy towards Cuba after Helms-Burton," 214.

<sup>52</sup> Kovaleski, "Castro Appears Strong, Cuban Economy Weak," p. A24.

<sup>53</sup> Ibid.

<sup>54</sup> Under the Act, the president may suspend Title III for periods up to six months.

<sup>55</sup> Not unexpectedly, no legal consensus exists on the Helms Burton Act. See, for example, Gonzalez, Cuba Clearing Perilous Waters, 70, footnote 9; Clagett, Brice M., "Title III of the Helms-Burton Act is Consistent with International Law," The American Journal of International Law, 90 (October 1996) 4: 434-440; Brice M. Clagett, "Agora: The Cuban Liberty and Democratic Solidarity (Libertad) Act, Continued," The American Journal of International Law, 90 (October 1996) 4: 641-644; Andreas F. Lowenfeld "Agora: The Cuban Liberty and Democratic Solidarity (Libertad) Act," The American Journal of International Law, 90 (October 1996) 4: 419-434; Theodor Meron. "The Helms-Burton Act: Exercising the Presidential Option," The American Journal of International Law, 91 (January 1997) 1: 83-84; and, Marian Nash, "Contemporary Practice of the United States Relating to International Law," The American Journal of International Law, 91 (January 1997) 1: 93-120.

<sup>56</sup> Therese Raphael, "U.S. and Europe Clash over Cuba," The Wall Street Journal, 31 March 1997, Sec. A, p. 14. Merrill Goozner, "U.S. Law Fails to Scare Canada Firms Out of Cuba", Chicago Tribune, 16 June 1997, Sec. 1, p. 4.

Canadian law bars companies operating in Canada from obeying the Helms-Burton Act or "observing any directive, instruction, intimation of policy, or other communication" from the United States that furthers the Cuba embargo. David C. Sanger, "U.S.-Canadian Split on Cuba Tangles Wal-Mart's Pajamas," The New York Times, 6 March 1997, Sec. A, pl.

An unintended consequence of the Act is the spurring on of Canadian businessmen to help Cuba beat the embargo. In the year following the Act, trade and tourism between Canada and Cuba has increased by 11 percent.

<sup>57</sup> John C. Scharfen, The Dismal Battlefield, (Annapolis, MD: Naval Institute Press, 1995), 129.

<sup>58</sup> Ibid, at 151-152.

<sup>59</sup> Gonzalez, Cuba Clearing Perilous Waters, 38.

<sup>60</sup> Serge F. Kovaleski, "Castro, Catholic Church Both Appear to Gain From John Paul's Visit," The Washington Post, 26 January 1998, Sec. A, p. A18.

Castro's political maneuverings leading up to and during the visit show Castro "remains firmly in control of Cuba." Kovaleski, "Castro, Ever the Politician, Consolidates His Grip on Power," p. A21.

<sup>61</sup> Kovaleski, "Castro, Catholic Church Both Appear to Gain From John Paul's Visit," p. A18. Quoting Wayne Smith, now a Cuba expert at the Center for International Policy in Washington, D.C.

<sup>62</sup> Thomas W. Lippman, "Helms Backs Aid to Cuba Proposed by Exile Group", The Washington Post, 1 February 1998, Sec. A, p. A25.

<sup>63</sup> Linda Robinson, "Pope giveth, Castro taketh", U.S. News & World Report, 2 February 1998, 42.

<sup>64</sup> As expected, the Pope criticized the Cuban embargo, just as he has consistently criticized other trade embargoes in the past. The Pope argued, "The Cuban people ... cannot be denied the contacts with other peoples necessary for economic, social and cultural development, especially when the imposed isolation strikes the population indiscriminately, making it ever more difficult for the weakest to enjoy the bare essentials of decent living, things such as education." Serge F. Kovaleski and Molly Moore, "Cubans Hear Freedom Call", The Washington Post, Sec. A, p. A18.

More simply, the Pope notes embargoes are "always deplorable because they hurt the most needy." Linda Robinson, "Pope giveth, Castro taketh," 42.

The Pope uses the concept of indiscriminate harm to condemn embargoes, which echoes the traditional principles of just-war.

This concept is developed more fully elsewhere. For instance, John C. Scharfen writes:

"According to just-war criteria, there must be a sufficiently good prospect of success to justify the human and other costs associated with the use of military force. Clearly this norm would pose problems for the user of economic force. As stated elsewhere in these pages, the history of the successful use of the economic instrument is not impressive."

Scharfen, The Dismal Battlefield, 90.

<sup>65</sup> "After more than a year of preparation, a secret tug of war over virtually every detail of the trip, the prospect of the pope's visit is still marked by tension and uncertainty." Brook Larmer, "The Battle for Cuba's Soul", Newsweek, 19 January 1998, 36.

<sup>66</sup> Ibid. at 36.

<sup>67</sup> Kovaleski, "Castro, Catholic Church Both Appear to Gain From John Paul's Visit," p. A18.

<sup>68</sup> The best arguments for implementing Helms-Burton may be moral. Castro's Cuba, after all, recently murdered American citizens. President Clinton refers to these murders when asked to justify his signing the Act into law. Peter Baker, "Clinton Asks for Broader Authority to Seek International Trade Pacts", The Washington Post, 12 April 1997, Sec. A, p. A20.

Embargoes can be justified on the grounds of expressing moral outrage. The property provisions under Title III are also best justified as a defense of private property values rather than as a tool to force economic or political change in Cuba.

<sup>69</sup> Clagett, "Agora: The Cuban Liberty and Democratic Solidarity (Libertad) Act," 422.

It has been written that for President Clinton to have "surrendered" his ability to make foreign policy is "astonishing". Leogrande, "Enemies evermore: US policy towards Cuba after Helms-Burton," 214.

Commentators have noted that Congress may never have adopted a statute comparable to Helms-Burton. For instance, neither Viet Nam nor China receive similar treatment. Clagett, "Agora: The Cuban Liberty and Democratic Solidarity (Libertad) Act," 422.

<sup>70</sup> John C. Scharfen has written that today no nation is prepared to engage in economic conflict competently. He writes:

"In an absolute rather than relative sense, the United States is incompetent to use or defend against the use of economic force effectively. Those who make decisions on, or are implementers in, the use of or defense against economic force do so without a national policy or doctrine; without concepts of employment or an adequate legislative or organizational framework; without strategy, tactics, or historical perspective; without a language, library, data bank, complete intelligence, experience, knowledge, or training."

Scharfen, The Dismal Battlefield, 90.

<sup>71</sup> House, Discussion Draft, *A Bill to Provide a Framework for Consideration by the Legislative and Executive Branches of Unilateral Economic Sanctions*, 105th Cong., 1st sess., October 20, 1997.

<sup>72</sup> Report of the Advisory Committee on International Economic Policy, The Sanctions Working Group, *U.S. Unilateral Economic Sanctions: A Strategic Framework*, September 1997, Tab 2-2.

<sup>73</sup> Ibid., 3.

<sup>74</sup> Ibid, Tab 1-2. The Sanctions Working Group's matrix of selected options include a wide range of foreign policy tools. These options include, among others, such things as state visits, level of diplomatic relations, broadcasts, loans, tariffs, cultural relations, scientific and academic exchanges, trade, Peace Corps activities, military exchanges and training, investment, and taxes.

See also, Scharfen, The Dismal Battlefield, 101, for another list of instruments of economic force.

<sup>75</sup> The greatest benefit of abandoning the property provisions of the Act is avoiding a trade war with our allies. David S. Cloud, "Clinton, Europe Buy Time on Cuba", Chicago Tribune, 12 April 1997, Sec. 1, p.1.

A dispute before the World Trade Organization (WTO) (where the U.S. intended to challenge the WTO's jurisdiction on national security grounds) would also undermine a free-trade forum that is primarily the U.S.'s creation. Undermining the jurisdiction of the WTO in this manner would harm free-trade interests that are central to the U.S.'s National Security Strategy. "Fixing a bad law", Boston Globe, 18 April 1997, Sec. A, p. 14.

<sup>76</sup> President William J. Clinton, "A National Security Strategy for a New Century", (Washington, D.C.: The White House, May 1997), 26.

<sup>77</sup> Ibid.

<sup>78</sup> Pope John Paul II stressed the importance of developing Cuban society in opposition to the communist party. Serge F. Kovaleski, "A Papal Counterrevolution", The Washington Post, 23 January 1998, Sec. A, p. A1.

<sup>79</sup> This sentence is based on remarks made by a speaker participating in the Commandant's Lecture series.

<sup>80</sup> Idid.

<sup>81</sup> Clinton, "A National Security Strategy for a New Century", 26.

<sup>82</sup> This sentence is based on remarks made by a speaker participating in the Commandant's Lecture series. It must be noted, however, that Cuba's shooting down of U.S. pilots is clearly a threat to U.S. security. This action and threat, however, must be evaluated within its unique circumstances. It bears asking whether this act, however outrageous, should drive U.S. strategic policy.

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